

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

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**FISCAL IMPACT STATEMENT**

**LS 6417**

**BILL NUMBER:** HB 1164

**NOTE PREPARED:** Dec 23, 2003

**BILL AMENDED:**

**SUBJECT:** Nonnutritive Beverage Tax.

**FIRST AUTHOR:** Rep. Summers

**BILL STATUS:** As Introduced

**FIRST SPONSOR:**

**FUNDS AFFECTED:** X GENERAL  
X DEDICATED  
X FEDERAL

**IMPACT:** State

**Summary of Legislation:** This bill imposes a tax of:

- (1) \$2 per gallon of syrup or simple syrup used to make nonnutritive beverage;
- (2) \$0.105 per gallon of bottled nonnutritive beverage; or
- (3) \$0.105 per gallon of powder-based nonnutritive beverage;

on a distributor, manufacturer, or wholesaler of nonnutritive beverages. The bill establishes and deposits tax revenue in the Long Term Care Continuum Fund. The bill requires the Office of Medicaid Policy and Planning to administer the Fund. The bill provides that money in the Fund is used to pay for certain Medicaid services.

**Effective Date:** July 1, 2004.

**Explanation of State Expenditures:** *Department of State Revenue:* Depending on how the proposed tax is implemented and collected, the Department of State Revenue could experience an increase in administrative costs. Any additional costs are presumed to be less than \$100,000 per year. As a point of reference, it is noted that Arkansas's Department of Finance and Administration manages a similar wholesale tax on nonnutritive beverages with one full-time employee.

*Office of Medicaid Policy and Planning (OMPP):* The bill establishes the dedicated, nonreverting Long Term Care Continuum Fund to be administered by OMPP. Eighty percent of the money in the Fund is required to be used as the state match to expand Medicaid home- and community-based services for the aged and physically disabled as well as the developmentally disabled. Twenty percent the money in the Fund may be used for long-term care services considered appropriate by the Office of Medicaid Policy and Planning.

<b>Required Use of Revenue</b>	<b>Distribution %</b>	<b>FY 2005</b>	<b>FY 2006</b>
Estimated Beverage Tax State Revenue	100%	\$48.5 M	\$53.6 M
Leverages Federal Medicaid FMAP @ 62%		79.1M	87.5 M
<b>For Total Medicaid Expenditures of:</b>		<b>\$127.6 M</b>	<b>\$141.1 M</b>
<b>Community and Home Services:</b>	<b>80%</b>	<b>\$102.1 M</b>	<b>\$112.9 M</b>
<i>for the Aged and Physically Disabled</i>	<i>67% of 80%</i>	<i>68.4 M</i>	<i>75.6 M</i>
<i>for the Developmentally Disabled</i>	<i>33% of 80%</i>	<i>33.7 M</i>	<i>37.3 M</i>
<b>Long-Term Care Services, as directed by OMPP</b>	<b>20%</b>	<b>25.5 M</b>	<b>28.2M</b>
<b>For Total Medicaid Expenditures of:</b>		<b>\$ 127.6 M</b>	<b>\$ 141.1 M</b>

The bill requires that the revenue raised by the Nonnutritive Beverage Tax be used to supplement state spending for the Medicaid services indicated above; it may not be used to replace state funding being paid as of January 1, 2004. For community- and home-based services, this would require an expansion of the funded slots available to provide services to individuals on waiting lists, an expansion of services available under the waivers, or an expansion of eligibility for waiver services. The final determination of the specific expenditures on home- and community-based services would be dependent upon legislative and administrative actions. The additional revenue may not be used to replace or reduce existing state appropriations for Medicaid.

Expenditures in the Medicaid program are shared, with about 62% of the total program expenditures reimbursed by the federal government and 38% provided by the state.

*Penalty Provision:* The bill makes it a Class D felony for a vendor to intentionally evade payment of the Nonnutritive Beverage Tax. A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances.

**Explanation of State Revenues:** *Excise Tax Revenue:* The excise tax on nonnutritive beverages is expected to generate approximately \$48.5 M in FY 2005 and \$53.6 M in FY 2006. The bill requires wholesalers or distributors of the affected nonnutritive beverages to remit the tax on a monthly basis. Due to the timing of remittance and posting of excise revenue, the estimated impact for FY 2005 includes collections from 11 of the 12 months the proposal would be in effect during FY 2005. The proposed tax will be assessed at the rate of \$2.00 per gallon of syrup used to make nonnutritive beverage and \$0.105 per gallon of bottled nonnutritive beverage. The tax will apply to all soft drinks and fruit drinks with less than 10% fruit juice. The tax will not apply to flavored coffee or tea, meal replacement drinks, milk or milk substitutes, or to powders sold for the purpose of mixing nonnutritive beverages by the retail consumer. The estimates above are based on Arkansas' experience with the tax and data from federal and industry sources.

Payers of the tax who make timely payments may deduct and retain a 1% collection allowance.

*Medicaid Program:* See also *Explanation of State Expenditures*, above, regarding federal reimbursements in the federal- and state-funded Medicaid Program.

*Penalty Provision:* If additional court cases occur and fines are collected, revenue to both the Common

School Fund (from fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class B misdemeanor is \$1,000. The maximum fine for a Class D felony is \$10,000. However, any additional revenue would likely be small.

**Explanation of Local Expenditures:** *Penalty Provision:* A Class B misdemeanor is punishable by up to 180 days in jail. If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

**Explanation of Local Revenues:** *Medicaid Provisions:* County-owned nursing facilities may receive additional reimbursement as a result of the additional funds for long term care services and community- and home-based care services.

**State Agencies Affected:** Department of State Revenue; Family and Social Services Administration, Office of Medicaid Policy and Planning, and the Division of Disability, Aging, and Rehabilitative Services.

**Local Agencies Affected:** Trial courts, local law enforcement agencies.

**Information Sources:** Economic Research Service, USDA; Beverage World; Beverage Digest; Arkansas Department of Finance and Administration.

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